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11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN JOSE DIVISION

14 SVB FINANCIAL TRUST,

15 Plaintiff,

16 v.

17 FEDERAL DEPOSIT INSURANCE
 18 CORPORATION, as Receiver for Silicon
 19 Valley Bank, et al.,

20 Defendants.

21 Case No. 5:24-cv-01321-BLF
 22 Case No. 5:23-cv-06543-BLF

23 **JOINT CASE MANAGEMENT
 24 STATEMENT**

25 Date: June 5, 2025
 26 Time: 11:00 a.m.
 27 Dept.: Courtroom 3 – 5th Floor
 28 Judge: Hon. Beth Labson Freeman

Date Filed: March 5, 2024

Trial Date: July 13, 2026

21 SVB FINANCIAL TRUST,

22 Plaintiff,

23 v.

24 FEDERAL DEPOSIT INSURANCE
 25 CORPORATION,

26 Defendant

1 Pursuant to Civil Local Rule 16-10(d), the Standing Order for All Judges of the Northern
 2 District of California, and the Court’s Standing Order, Plaintiff SVB Financial Trust (“SVBFT”)
 3 and Defendants Federal Deposit Insurance Corporation, in its corporate capacity (“FDIC-C”),
 4 Federal Deposit Insurance Corporation, as Receiver for Silicon Valley Bank (“FDIC-R1”) and
 5 Silicon Valley Bridge Bank, N.A. (collectively, “FDIC-R”) (together with FDIC-C, the “FDICs”)
 6 (together with SVBFT, the “Parties”) jointly submit this Joint Case Management Statement in
 7 connection with the June 5, 2025 case management conference. Because Case No. 5:23-cv-
 8 06543-BLF against FDIC-C is stayed pursuant to the Court’s so-ordering of the May 28, 2025
 9 Stipulation (FDIC-R Action, Dkt. 208), FDIC-C takes no position on any of the issues discussed
 10 below.

11 **I. NARROWING OF ISSUES**

12 **SVBFT’s Position**

13 This week, the Parties significantly streamlined these consolidated cases and narrowed the
 14 issues for the Court to decide to just this: whether and to what extent the FDIC-R’s affirmative
 15 defenses reduce or extinguish its now stipulated liability to SVBFT for breach of contract (Count
 16 One). In a stipulation filed May 28, 2025 (FDIC-C Action, Dkt. 189; FDIC-R Action, Dkt. 205)
 17 (“May 28, 2025 Stipulation”), the Parties agreed that FDIC-R’s liability to SVBFT under Count
 18 One is \$1,710,000,000, subject to any reduction based on the FDIC-R1’s Preserved Defenses—
 19 which are themselves a subset of the affirmative defenses the FDICs initially pled.¹ And FDIC-C
 20 agreed to unconditionally guarantee the payment of this amount, backed by the full faith and
 21

22 ¹ The Preserved Defenses consist of: Setoff For Aiding and Abetting Breaches of Fiduciary Duty
 23 (Affirmative Defense No. 1); Setoff for SVB Financial Group’s Liability For Acts of its Agents
 24 (Affirmative Defense No. 2); Setoff For Negligence (Affirmative Defense No. 3); Unclean Hands
 25 (Affirmative Defense No. 4); Unjust Enrichment (Affirmative Defense No. 5); Constructive
 26 Fraudulent Transfer (Affirmative Defense No. 6); Precluded By Contract (Affirmative Defense
 27 No. 10); Precluded by Immunity (Affirmative Defense No. 11); and *In Pari Delicto* (Affirmative
 28 Defense No. 14).

1 credit of the United States, at the time of final judgment. In return, SVBFT agreed to dismiss all
 2 of its claims against FDIC-R (except the breach of contract claim against FDIC-R1), with
 3 prejudice, and to stay its case against FDIC-C. Thus, the Court need not adjudicate any of
 4 SVBFT's affirmative claims, including whether SVBFT is entitled to recover the full amount of
 5 its deposits based on the promissory estoppel claim asserted against the FDIC-C, the import of the
 6 Systemic Risk Exception, or even which entity (FDIC-R or FDIC-C) is responsible for denying
 7 SVBFT access to its Account Funds. Instead, the only issues left to litigate and decide are the
 8 validity of FDIC-R's Preserved Defenses, and their impact—if any—on FDIC-R's now stipulated
 9 liability.

10 **FDIC-R1's Position**

11 SVBFT abandoned their promissory estoppel claim and request for \$1.93 billion—after
 12 consuming substantial judicial and party resources for a year litigating those claims—as part of a
 13 stipulation staying and ultimately dismissing the FDIC-C and the FDIC-R2 in exchange for a
 14 commitment to pay a judgment, if any, after a complete resolution of the FDIC-R1's affirmative
 15 defenses. The stipulation obviated the need for just a few depositions concerning a two-week
 16 period on which SVBFT based its promissory estoppel claim. But this stipulation did not
 17 materially streamline or simplify the most complicated part of the case. Indeed, the bulk of the
 18 case remains and is factually complex, involves millions of documents, billions of dollars in
 19 setoffs, and requires more than 20 fact depositions on the mismanagement of SVB's securities
 20 portfolio and imprudent payment of a bank-to-parent dividend at a time when SVB was under
 21 financial distress. These defenses were timely filed in January 2025, less than six months ago.
 22 Extensive fact depositions and expert discovery regarding negligent and grossly negligent
 23 conduct by SVB and Holding Company officers and directors over a multi-year period remain to
 24 be completed.

25 **II. CASE MANAGEMENT CONFERENCE**

26 **SVBFT's Position**

27 Given the important issues that the Parties have raised in this joint statement for
 28 discussion during the June 5 case management conference, SVBFT respectfully requests that the

1 Court hold the June 5 case management conference in person; to the extent the Court is
 2 unavailable for an in-person hearing on June 5, SVBFT requests that the Court keep the June 5
 3 date and proceed virtually so that the Parties have the benefit of the Court's guidance on these
 4 issues as soon as practicable.

5 **FDIC-R1's Position**

6 FDIC-R1 defers to the Court's preference for handling of the June 5 case management
 7 conference and welcomes the opportunity to present its position in any format. FDIC-R1
 8 understands that the Court ordered a Zoom webinar hearing. To the extent the Court instead
 9 decides an in-person hearing would be more helpful, FDIC-R1 welcomes that opportunity.

10 **III. SCHEDULING**

11 **SVBFT's Position**

12 Given that the Parties have substantially narrowed the issues that remain to be resolved,
 13 leaving only the need to adjudicate FDIC-R1's Preserved Defenses, SVBFT respectfully requests
 14 that the Court accelerate the bench trial currently scheduled for July 13, 2026, to a date closer in
 15 time to the February 5, 2026 summary judgment hearing, which would permit the Court to
 16 resolve outstanding issues of fact (if any) soon after resolving any matters presented for
 17 adjudication at the summary judgment hearing. To the extent the Court determines that granting
 18 summary judgment is appropriate, the Court may vacate the trial date, or, alternatively, go
 19 forward to a bench trial to resolve any outstanding issues of fact that remain. Adjudicating the
 20 Preserved Defenses at the earliest available time would limit the ongoing prejudice suffered by
 21 SVBFT as a result of pre-judgment interest not being available in these actions.

22 The current consolidated case schedule is set forth below alongside SVBFT's proposed
 23 accelerated schedule:

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Event	Date	SVBFT Proposed Date
Close of Fact Discovery	July 25, 2025	July 25, 2025
Opening Expert Reports	September 18, 2025	September 18, 2025
Rebuttal Expert Reports	October 22, 2025	October 22, 2025
Close of Expert Discovery	December 10, 2025	December 10, 2025
Motions for Summary Judgment	December 31, 2025	December 31, 2025
MSJ opposition(s)	January 14, 2026	January 14, 2026
Reply to MSJ	January 21, 2026	January 21, 2026
Hearing on MSJs	February 5, 2026	February 5, 2026
Daubert Motion(s)	TBD	TBD
Opposition(s) to Daubert Motion(s)	TBD	TBD
Replies to Daubert Motion(s)	TBD	TBD
Motions <i>in limine</i> , if any	April 10, 2026	TBD
Oppositions to Motions <i>in limine</i> , if any	April 23, 2026	TBD
Hearing on Daubert Motion(s)	TBD (no later than May 14, 2026)	TBD
Joint Pretrial Statement and Proposed Order	April 23, 2026	TBD
Proposed Findings of Fact and Conclusions of Law	April 23, 2026	TBD
Trial brief (if any)	April 23, 2026	TBD
Final Pretrial Conference	May 7, 2026, 1:30 pm	TBD
Trial (10 days)	July 13, 2026	February or March 2026 subject to the Court's availability

1 FDIC-R1's proposal below that the Court extend the case schedule by at least five months
 2 does not comport with reality: it ignores the substantial progress that the Parties have made in
 3 completing document discovery, scheduling depositions (which are all currently set to go forward
 4 before the current close of fact discovery), and in narrowing the dispute pursuant to the May 28,
 5 2025 Stipulation. FDIC-R1 further mischaracterizes the developments since the February 6, 2025
 6 Case Management Conference on several issues, which SVBFT addresses in turn.

7 **Depositions.** The fact that FDIC-R1 dragged its feet and failed to notice a single
 8 deposition until May 7, 2025—three months after the February 6, 2025 case management
 9 conference—only demonstrates its attempt to manufacture delay and avoid final resolution of
 10 FDIC-R1's Preserved Defenses. And even with the FDIC-R1's delay in noticing any depositions,
 11 the majority of the former directors and officers have confirmed or offered dates for deposition
 12 prior to the July 25 close of fact discovery, as expected. To date, the Parties have confirmed dates
 13 for sixteen of the twenty depositions that the FDIC-R1 has noticed that remain relevant following
 14 the May 28, 2025 Stipulation. For the remainder, counsel for the witnesses have been conferring
 15 with the Parties to identify dates that the witnesses are available. Not a single witness has refused
 16 to be deposed prior to July 25. Nor has the FDIC ever indicated—until this filing—that it is
 17 unwilling or unable to accommodate the dates identified by the witnesses; to the contrary, it
 18 confirmed on May 28 that the depositions would go forward on those dates. (From its end,
 19 SVBFT has always been—and still is—prepared to go forward on the noticed and scheduled
 20 dates.)

21 Following the February 6, 2025 case management conference, SVBFT repeatedly asked
 22 that the FDIC-R identify the ten witnesses it intended to depose so that the Parties could confer in
 23 good faith and efficiently on the additional depositions that would be necessary beyond the
 24 default limit. The FDIC-R initially identified 36 witnesses, and only as part of the joint letter
 25 brief procedures before Judge DeMarchi did it reduce that number to 30 witnesses. As of the date
 26 of the discovery hearing before Judge DeMarchi on deposition limits, April 30, 2025, the FDIC-R
 27 had not noticed a single deposition. At the hearing, Judge DeMarchi warned FDIC-R that they
 28 needed to start scheduling depositions “right away” because there was “no guarantee” that this

1 Court would extend the close of fact discovery beyond July 25. Apr. 30 Hr'g Tr. at 17:6-8;
 2 17:23-18:2. Only after that hearing did the FDIC-R1 finally issue 22 subpoenas (two of which
 3 are now moot following the May 28, 2025 stipulation). The fact that the witness depositions are
 4 now primarily concentrated in July is entirely a problem of FDIC-R's own making. And there is
 5 no reason that the FDIC-R—which is represented by three different law firms—cannot now live
 6 with this timeline.

7 **Document Discovery.** FDIC-R1 suggests that the case schedule should be extended in
 8 part due to document production issues. That position is baseless: the sole issues that remains for
 9 adjudication in this action relate to FDIC-R1's Preserved Defenses, and the FDIC-R1 has had the
 10 Bank ESI data (over 22 million documents) relevant to the Preserved Defenses since **2023**, and
 11 the FDIC-R1 issued administrative subpoenas for additional documents from the former directors
 12 and officers in **January 2024** (the same documents that the FDIC-R1 had had for months and
 13 months and were produced to SVBFT in this litigation in February 2025). Simply put, FDIC-R
 14 has had all of the documents that are the basis for its Preserved Defenses for over a year.

15 Documents that were produced by SVBFT after the February 6, 2025 case management
 16 conference consist almost entirely of post-bank closure documents that are irrelevant to the
 17 Preserved Defenses. The pre-closure documents that SVBFT produced after the February 6, 2025
 18 case management conference consist almost exclusively of board materials that were already in
 19 the Bank ESI data. That is, the vast majority of the pre-closure documents that SVBFT produced
 20 after the February 6, 2025 case management conference are effectively re-productions of
 21 materials that FDIC-R1 has had access to for several years.

22 FDIC-R1's recently raised dispute regarding a small set of documents that SVBFT has
 23 designated as subject to exclusive privilege is just another example of FDIC-R1's efforts to
 24 manufacture delay. SVBFT served its privilege log identifying these documents on April 9. The
 25 FDIC-R1 then waited over six weeks, until May 23, on the eve of submitting this statement, to
 26 file the nine-page motion with Judge DeMarchi challenging that early April privilege assertion.
 27 Regardless, FDIC-R1's challenge is not a basis to change the existing case schedule: it affects a
 28 small number of documents, the issue will be heard on June 24 (weeks before the majority of the

1 depositions are even scheduled to go forward), and there is no basis for challenging SVBFT’s
 2 assertion of privilege in any case.

3 **Expert Discovery.** FDIC-R1 suggests that the existing stipulated expert discovery
 4 schedule “does not realistically account for the expert opinions and expert depositions relating to
 5 the FDIC-Rs’ affirmative defenses.” That position makes no sense given that the FDIC-R1
 6 stipulated to the existing expert discovery schedule on February 28, 2025 knowing full well the
 7 scope of its alleged affirmative defenses that were filed on January 10, 2025. (FDIC-R Action,
 8 Dkt. No. 169.) Since stipulating to that expert discovery schedule, the scope of expert discovery
 9 has only narrowed, not enlarged, pursuant to the May 28, 2025 Stipulation.

10 **The Officer Action.** SVBFT includes below in the Bifurcation Section the reasons why
 11 the Preserved Defenses, if any, that survive the Motion to Strike should proceed without further
 12 delay. As discussed, FDIC-R’s complaints of prejudice are a result of FDIC-R1’s belatedly filed
 13 lawsuit against the former directors and officers, which exists solely to delay resolution of
 14 SVBFT’s claims and seeks billions of dollars that those 17 individuals simply cannot pay.

15 **FDIC-R1’s Position**

16 An extension of the Court’s case management deadlines is necessary given the substantial
 17 amount of oral discovery that remains to be completed concerning the FDIC-R1’s affirmative
 18 defenses, the current posture of the pleadings, and the need to manage this litigation to preserve the
 19 FDIC-R1’s jury trial right in the litigation against seventeen of the Bank’s former officers and
 20 directors pending before Judge Wise, *FDIC as Receiver for Silicon Valley Bank v. Becker et al.*,
 21 No. 5:25-cv-00569 (“D&O Case”). As FDIC-R proposed at the last case management conference,
 22 fact discovery should be extended to December 5, 2025 so FDIC-R1 can resolve ongoing document
 23 and privilege disputes and complete twenty-three depositions.

24 **A. Developments Since the Court’s February 6, 2025 Case Management
 25 Conference**

26 At the last case management conference on February 6, 2025, this Court set July 25, 2025,
 27 as the fact discovery cutoff (Dkt. No. 157), which the Court recognized was an “ambitious
 28 schedule.” (Dkt. No. 158, February 6, 2025 Transcript of Proceedings (“Tr.”), 25:9-10.) That
 deadline is only six months after the FDIC-Rs filed their affirmative defenses to SVBFT’s claims.

1 *See* Dkt. No. 135.

2 The Court set this deadline based, in part, on representations by SVBFT's counsel that (1)
 3 party document productions were nearly completed, and (2) the Bank's former directors and
 4 officers were ready and willing to sit for depositions. *See* Tr. 5:15-16 ("[W]e actually are quite far
 5 along in discovery, and document discovery is nearly completed as we sit here today."); Tr. 8:14-
 6 18 ("we're going to be talking about starting depositions this month, or early next, we're in
 7 February now, and I think that they'll be a handful of people on both sides that need to be deposed");
 8 Tr. 9:1-3 ("The Ds and Os, we're in touch with them. They're prepared to sit for depositions.
 9 They're not going to demand a lot of delay[.]"); Tr. 9:18-19 ("[T]he document production is almost
 10 complete on both sides and we're ready to start depositions."); Tr. 16:18-20 ([The directors and
 11 officers] "do intend to participate, obviously as third parties in this case and will sit for
 12 deposition.").

13 These representations have proven to be inaccurate. First, party document productions were
 14 not substantially complete until April 30, 2025, which was the deadline for party documents in the
 15 FDIC-C Case. SVBFT, the FDIC-C, and the FDIC-Rs continued to produce significant numbers
 16 of documents months after the February 6, 2025 case management conference. SVBFT did not
 17 produce a *single* document in this case until January 29, 2025, and SVBFT has continued to produce
 18 documents into May. There remain ongoing document disputes concerning SVBFT's document
 19 production, including SVBFT's improper exclusive privilege claims over legal advice provided to
 20 the joint Board of Directors of the Bank and holding company concerning corporate governance
 21 matters, which are at issue in this case. Resolution of these disputes is necessary for the completion
 22 of director and officer depositions critical to the FDIC-Rs' affirmative defenses.

23 Second, despite SVBFT's counsel's representations, the former directors and officers have
 24 been unwilling to appear promptly for depositions. As the Court is aware, on January 16, 2025, the
 25 FDIC-R1 filed suit against seventeen former directors and officers of the Bank ("D&Os").
 26 Testimony from the D&Os is crucial to the FDIC-R1's affirmative defenses in this case. The FDIC-
 27 Rs first requested deposition dates from these witnesses in March, again in April, and then again in
 28 May. The FDIC-Rs requested all available dates in May, June, and July for these depositions, so

1 contrary to SVBFT's claims, the FDIC-R timely requested these depositions months in advance but
 2 could not get third party agreement due to the D&O Case. The D&Os refused to even provide
 3 proposed dates until very recently. For months, the D&Os objected to appearing for depositions
 4 until the FDIC-R1 produced all documents relevant to the D&O Case to them. To expedite
 5 depositions and despite their third-party status in this litigation, the FDIC-R1 produced to the D&Os
 6 millions of documents before its responses to requests for production in the D&O Case were even
 7 due. After the FDIC-Rs' threatened motions to compel, the D&Os finally recently offered tentative
 8 dates, almost entirely concentrated in a few weeks in July, for all their depositions. These proposed
 9 dates—including as many as three depositions in a single day and seven or more in a single week—
 10 are wholly unreasonable and would unnecessarily jam more than twenty depositions throughout
 11 the country into approximately twenty-three business days. The FDIC-Rs have moved diligently
 12 to request these depositions beginning in March, but their volume and importance require additional
 13 time to complete. Several third-party witnesses have yet to provide any proposed deposition dates.
 14 And most recently on May 28, former CEO Gregory Becker offered for the first time a tentative set
 15 of dates the week of July 22. Mr. Becker conditioned that date on the FDIC-R1 noticing that
 16 deposition in both lawsuits and representing that all documents that will be used in the deposition
 17 have been produced even though other directors and officers are demanding supplemental
 18 productions before their depositions. Mr. Becker has indicated he intends to take this dispute to
 19 Judge DeMarchi and has requested a lead counsel conference for early June.

20 Moreover, the D&Os have placed numerous unreasonable conditions on their appearance
 21 at depositions including, but not limited to, the following: (1) the D&Os contend that FDIC-R1
 22 waives its right to take depositions of these witnesses in the D&O Case; and (2) unless the FDIC-
 23 R1 produces additional documents (which cannot feasibly be done within the current discovery
 24 schedule), the D&Os may seek to bar usage of their deposition testimony in the D&O Case.
 25 Further, the D&Os have claimed that if the FDIC-R1 does not produce more documents, then the
 26 deponents may not be able to adequately prepare, and therefore the FDIC-Rs may not obtain useful
 27 or informed testimony from these critical witnesses. The FDIC-R1 should not be forced to
 28 compromise its D&O Case in this manner to meet the existing case schedule in this case. As the

1 FDIC-Rs have raised several times, including in connection with the related case and consolidation
 2 motions, coordinating schedules between this action and the D&O Case is necessary to avoid these
 3 complications and inefficiencies given the relationship of triable issues and overlap in discovery.

4 The start of depositions in this case also have been delayed by SVBFT's failure to cooperate
 5 in negotiations over the appropriate number of depositions. In advance of the February case
 6 management conference, the FDIC-Rs raised SVBFT's refusal to agree to a reasonable and
 7 necessary increase to deposition limits given the scope of the FDIC-Rs' defenses and the number
 8 of potentially relevant witnesses, including the seventeen former D&Os. (Dkt. 150). By
 9 unreasonably limiting the number of depositions, SVBFT sought to block the FDIC-Rs from
 10 developing sufficient evidence for their defenses because SVBFT has access to all the former
 11 D&Os and has represented they require no depositions to address the FDIC-Rs' defenses. At the
 12 February 6, 2025 case management conference, the Court directed the Parties to substantively
 13 discuss potential deponents to reach agreement, stated that more than ten depositions would be
 14 appropriate, and expected that SVBFT would object to only a few depositions. (Tr. at 26:19-27:15.)
 15 Over three meet and confer sessions, SVBFT refused to engage substantively in that witness-by-
 16 witness process, resulting in an April 30, 2025 hearing before Judge DeMarchi, after which the
 17 Parties stipulated that the FDIC could take 23 Rule 30(b)(1) depositions. (Dkt. Nos. 182, 189, 196-
 18 98.) No party has taken a deposition yet; for their part, the FDIC-Rs could not begin taking
 19 depositions until they knew at least the approximate number of depositions that they would be
 20 permitted so they could prioritize which depositions to take. SVBFT could have agreed to a
 21 reasonable number of depositions months earlier to facilitate the process, but SVBFT chose to
 22 litigate that issue before agreeing to 23 depositions at the hearing. One week after the April 30,
 23 2025 hearing before Judge DeMarchi, the FDIC-Rs served twenty-two deposition notices because
 24 the FDIC-Rs then knew the scope of permitted depositions. Certain third parties including former
 25 Bank employees and consultants are confirmed and directors and officers have tentatively offered
 26 dates with the above referenced improper conditions. Efforts to secure these and additional
 27 depositions are ongoing, but the timeframe is far too compressed to reasonably complete the
 28 depositions in the current schedule.

B. Preservation of the FDIC-R1's Jury Trial Right in the D&O Case

As this Court has recognized, the jury trial in the D&O Case should proceed before the bench trial of the FDIC-Rs' affirmative defenses in this case. (Tr. 14:8-16.) A contrary approach risks depriving the FDIC-R1 of its jury trial right. As the Court noted when denying the FDIC-Rs' motion to consolidate, "through case management the Court can ensure that the FDIC is not prejudiced by the progress of the Becker Action vis-à-vis this action." (Dkt. No. 194, at 3.) Accordingly, the trial on the FDIC-Rs' defenses should follow the jury trial in the Becker Action. That case remains at the pleading stage with a hearing on pending motions to dismiss set for September 10, 2025, and an initial case management conference set for September 9, 2025.

Given the timing of the D&O Case, concentrating twenty-three depositions—which would benefit from coordination with the other action—plus depositions taken by SVBFT into July 2025 and completing expert discovery in 2025 is both prejudicial to the FDIC-Rs and wholly unnecessary given that trial of this matter must await the completion of the D&O Case and its jury trial, which will surely take longer than this current case schedule.

C. A Meaningful Extension of the Court's Case Management Deadlines is Warranted

The current July 25 fact discovery deadline should be extended for several reasons. First, SVBFT’s motion to strike the FDIC-Rs’ affirmative defenses remains pending following argument in early May. The Parties should have the benefit of the Court’s ruling on that motion to inform fact depositions. Yet under the current schedule, the Parties may not have the Court’s ruling until after most, if not all, of fact discovery is completed. Moreover, the Parties need that ruling to inform and direct expert work. On the current schedule, opening expert reports are due on September 18.

Second, the scope and complexity of depositions concerning the FDIC-Rs' affirmative defenses require additional time. All the FDIC-Rs' witnesses are third parties, virtually all of whom are cooperating with SVBFT, so there is an extreme asymmetry in the Parties' need for depositions and resulting positions on the discovery schedule. The FDIC-Rs are working expeditiously to take the twenty-three fact depositions concerning their defenses, but they need to resolve document disputes with the D&Os and coordinate those depositions with the D&O Case, to the extent

1 possible. No depositions by any party have taken place. Requiring the FDIC-Rs to depose these
 2 third parties in a less than thirty-day sprint is unreasonable and prejudicial to the FDIC-Rs' ability
 3 to develop evidence for their defenses in this highly significant litigation with \$1.71 billion at issue.

4 Third, SVBFT's conduct has undermined its stated goal of rapidly moving this case to trial.
 5 SVBFT filed two lawsuits rather than one; waited more than a year to move for consolidation of
 6 those suits; chose to pursue constitutional and extra-contractual claims requiring multiple rounds
 7 of motions to dismiss and hearings plus significant volumes of document production and disputes
 8 on written discovery concerning those claims; wasted the Parties' and the Court's time and
 9 resources on claims and processes for addressing a supposed exclusive attorney-client privilege
 10 that it has since largely abandoned; deprived the FDIC-Rs of the ability to review millions of Bank
 11 documents for over a year based on privilege objections; delayed its own document production and
 12 meaningful negotiations on custodians and search terms for the FDIC-Rs' document production of
 13 Bank documents; moved to strike the FDIC-Rs' affirmative defenses; refused to negotiate
 14 meaningfully on an appropriate number of depositions; and represented that the D&Os would sit
 15 for depositions even though the D&Os' counsel refused to even provide deposition availability for
 16 months afterwards and conditioned attendance on unreasonable conditions. SVBFT's own
 17 litigation tactics have consumed substantial party and judicial resources rather than simplifying the
 18 case for trial. SVBFT cannot repeatedly complicate the case's progress and then claim prejudice
 19 of its own making.

20 Fourth, an extension is particularly warranted because this case should not proceed to trial
 21 before the D&O Case due to the FDIC-R1's jury trial right. Concentrating fact and expert discovery
 22 into a very narrow period will not speed up the ultimate resolution of this case because trial in this
 23 case must await the jury trial in the D&O Case. At a minimum, the fact discovery schedule should
 24 be sufficiently extended so the FDIC-Rs can address any document disputes with the D&Os and
 25 attempt to coordinate those depositions with the D&O Case and take the depositions over a
 26 reasonable period of time.

27 Based on the foregoing factors, the FDIC-R1 submits that the fact discovery deadline should
 28 be extended to December 5, 2025. This is the same fact discovery deadline that the FDIC-Rs

1 proposed at the February case management conference. Given the scope of complex factual issues,
 2 the present posture and remaining oral discovery to be completed, and need for coordination with
 3 the D&O Case, a December 5, 2025 fact discovery cutoff remains an aggressive deadline that
 4 protects the FDIC-R1's need to secure substantial third-party testimony to prove its defenses.

5 The FDIC-R1 proposes that subsequent expert and summary judgment deadlines then flow
 6 from that date as the FDIC-Rs previously proposed. At the Court's instruction, the FDIC-Rs
 7 stipulated to the highly compressed, current expert discovery schedule based on the trial and
 8 summary judgment dates set by the Court. The FDIC-Rs have always taken the position, consistent
 9 with the February case management conference, that a longer expert schedule is needed given the
 10 scope of expert opinions and expert depositions relating to the FDIC-R1's affirmative defenses.
 11 The FDIC-R1 anticipates that each party will have multiple experts on topics that include the
 12 standard of care governing the Bank and SVBFT's shared directors and officers, mismanagement
 13 of the Bank's held-to-maturity and available-for-sale securities portfolios, payment of the
 14 imprudent bank-to-parent dividend, the Bank's insolvency, and the billions in damages caused by
 15 SVBFT's misconduct. Sufficient time for experts to review the factual record, prepare opening and
 16 rebuttal reports, and conduct expert depositions is needed. In short, the current expert schedule is
 17 not feasible given the scope of anticipated expert reports and discovery, particularly based on the
 18 FDIC-R1's affirmative defenses.

19 The FDIC-R1's proposed case schedule is attached as Exhibit 1, which is the same schedule
 20 that the FDIC-Rs proposed prior to the February 6, 2025 case management conference. The Parties,
 21 third parties, and the Court will benefit from a realistic case schedule that permits an efficient
 22 resolution of this matter.

23 SVBFT's unreasonable request to accelerate the trial date has been twice rejected and is
 24 plainly absurd. It requests the trial to occur in the same month as the summary judgment hearing
 25 without any proposal for pretrial processes. SVBFT merely makes this request in hopes the Court
 26 will reject the FDIC-R1's request to extend the discovery schedule. But unlike SVBFT's request,
 27 the FDIC-R1's proposal is grounded in the objective status of discovery and the significant scope
 28 of work remaining to complete fact and expert discovery. The Parties have worked at a rapid

1 pace to conduct discovery on the FDIC-Rs' defenses as quickly as possible since their filing in
 2 January. But completing over twenty depositions prior to July 25 while a pleadings-based motion
 3 remains pending and third parties are raising substantial issues is not feasible or fair to the FDIC-
 4 R1's ability to conduct discovery to prove its defenses. And it is not remotely justified by any
 5 extraordinary exigency.

6 **IV. BIFURCATION**

7 In a recent hearing, May 1, 2025 Hr'g Tr. 62:11-63:4, the Court raised the possibility of
 8 bifurcating SVBFT's claims and FDICs' affirmative defenses in this matter, where SVBFT's
 9 claims against the FDICs would proceed on the current case schedule, and the FDICs' affirmative
 10 setoff defenses would be stayed pending the outcome of *Federal Deposit Insurance Corporation*
 11 *as Receiver for SVB v. Becker, et. al.*, No. 5:25-cv-569 (N.D. Cal.) (the "Officer Action"). Under
 12 this proposal, the Court suggested that it might order the FDIC to place any amount owed under
 13 SVBFT's affirmative claims in an interest-bearing escrow account until the FDIC's affirmative
 14 defenses are resolved. The Parties take the following positions:

15 **SVBFT's Position**

16 In light of the May 28, 2025 Stipulation, bifurcation of SVBFT's affirmative claims from
 17 FDIC-R1's Preserved Defenses is not required because SVBFT's affirmative claims have already
 18 been resolved, and the only remaining issues to be adjudicated are FDIC-R1's Preserved
 19 Defenses. SVBFT objects to delaying the resolution of FDIC-R1's Preserved Defenses until after
 20 the trial in the Officer Action.

21 As a threshold matter, delaying resolution of the Preserved Defenses is unnecessary
 22 because the Court should grant SVBFT's pending motion to strike the FDICs' affirmative
 23 defenses. (See FDIC-R Action, Dkt. 160.) But even if the FDICs' setoff defenses were to
 24 survive, the Court still should not delay adjudication of the Preserved Defenses pending the
 25 Officer Action because doing so would unfairly and prejudicially delay resolution of this action.
 26 SVBFT filed its claims against the FDICs as soon as it was legally able to, in 2023 and 2024.
 27 SVBFT's claims to recover its money have now been pending in this Court for over a year, with
 28 trial set for July 13, 2026. The Parties have expended significant efforts to keep this consolidated

1 action on track and have streamlined the issues in dispute by resolving liability on SVBFT’s
 2 affirmative claims, leaving only the FDIC-R1’s Preserved Defenses for adjudication. The Parties
 3 have completed document discovery, including for all of the Preserved Defenses, and fact
 4 discovery will close in less than two months.

5 There is also no good cause to delay trial on the Preserved Defenses. Nothing that
 6 happens in this consolidated action, including the resolution of the Preserved Defenses, will bind
 7 the director and officer defendants in the Officer Action. As this Court has held, the FDIC-R
 8 Action and the Officer Action “do not concern substantially the same parties, property,
 9 transaction, or event.” FDIC-R Action, Dkt. 194 at 3. Moreover, the *res judicata* doctrines of
 10 claim preclusion and issue preclusion can only be invoked against a party to both proceedings, or
 11 against nonparties who meet narrow exceptions, none of which are applicable here. *See Taylor v.*
 12 *Sturgell*, 553 U.S. 880, 895 (2008) (narrowly defining the preclusive effect of a federal court
 13 judgment on nonparties). Because the directors and officers are not parties to this consolidated
 14 action, and SVBFT does not purport to represent their interests (and each defendant in the Officer
 15 Action is represented by their own separate counsel), they cannot be bound by the Court’s
 16 adjudication of the FDIC-R1’s Preserved Defenses in this consolidated action. The reverse is also
 17 true. No issue resolved against the directors and officers in the Officer Action can bind SVBFT
 18 in this case. Thus, no efficiency is gained by allowing the Officer Action to proceed first, even if
 19 issues were to overlap. This case and the Officer Action likewise do not satisfy the separate
 20 “identity of claims” requirement for claim preclusion. *Turtle Island Restoration Network v. U.S.*
 21 *Dep’t of State*, 673 F.3d 914, 918 (9th Cir. 2012) (evaluating whether claims involve
 22 “substantially the same evidence,” “infringement of the same right,” and “arise out of the same
 23 transactional nucleus of facts”). As set forth in detail in SVBFT’s opposition to FDIC-R’s motion
 24 to consolidate, the factual and evidentiary issues in the Preserved Defenses will be narrowly
 25 focused on SVBFT’s purported duties and asserted failures in supervising SVB, and not the
 26 alleged breach of duties of 17 former directors and officers at issue in the Officer Action. *See*
 27 FDIC-R Action, Dkt. 180, at 6–7. This Court’s orders denying FDIC-R’s motion to relate the
 28 cases and to coordinate this action with the Office Action underscore that point. (FDIC-R Action,

1 Dkt. 194 at 3; FDIC-R Action, Dkt. 142.)

2 FDIC-R will not be prejudiced if the Preserved Defenses are heard in this action first, and
 3 to the extent FDIC-R claims prejudice, it is of their own making. FDIC-R delayed filing its
 4 lawsuit against the former directors and officers for over a year and seeks billions from
 5 individuals who cannot possibly pay the amount sought. Issue preclusion also will only bind the
 6 FDIC-R in the Officer Action on issues that were “necessarily decided” in this case. *Oyeniran v.*
 7 *Holder*, 672 F.3d 800, 806 (9th Cir. 2012). The significant differences between the Preserved
 8 Defenses and the claims in the Officer Action make it unlikely that there will be any overlapping
 9 “necessarily decided” issues in this action. Even assuming FDIC-R is bound on some issue
 10 decided in this action, that would not “interfere” with FDIC-R1’s Seventh Amendment jury trial
 11 right in the Officer Action or cause any prejudice. This issue was presented to the Supreme Court
 12 in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979). The Court held that the Seventh
 13 Amendment does not prevent a court from adjudicating equitable claims even if that adjudication
 14 would preclude subsequent relitigation of the same factual issues in a jury trial. 439 U.S. at 336–
 15 37. As a result, courts in this district have refused to stay the resolution of equitable claims
 16 pending a jury trial in other actions; “*Parklane Hosiery . . . counsels against*” such a result. *See*,
 17 *e.g.*, *United States v. Cathcart*, 2008 WL 4279716, at *1–*2 (N.D. Cal. Sept. 12, 2008)
 18 (Hamilton, J.). Indeed, Judge Orrick has described “delaying resolution” of a “significantly more
 19 advanced” action slated for a nonjury determination of a shared issue in favor of a jury trial action
 20 filed a year later as an “inefficient [and] absurd result.” *Complete Genomics, Inc. v. Illumina,*
 21 *Inc.*, 2021 WL 1197096, at *3–*4 (N.D. Cal. Mar. 30, 2021). Just so, here.

22 Finally, during the pendency of this consolidated action, prejudgment interest does not
 23 accrue due to the FDICs’ claim to sovereign immunity, *see* FDIC-R Action, Dkt. 108, at 11. As a
 24 result, every day of delay in resolving FDIC-R1’s Preserved Defenses prejudices SVBFT due to
 25 the lost time value of its money. The Court’s suggestion that the funds could be placed in an
 26 interest-bearing escrow account during any delay in the trial of the Preserved Defenses in this
 27 action would mitigate—but not cure—the loss of earning potential on SVBFT’s funds. And
 28 delaying adjudication of the FDIC-R1’s Preserved Defenses pending resolution of the Officer

1 Action will result in substantial delay, as the Officer Action is in its infancy. Despite launching
 2 an investigation into potential claims in **2023**, FDIC-R1 chose to delay filing the Officer Action
 3 until January 2025. *See* Officer Action, Dkt. 1. The motions to dismiss in the Officer Action
 4 were recently filed and will not be heard until September 10, 2025, *see* Officer Action, Dkts. 99-
 5 100, 102-105, and the initial case management conference is currently scheduled for September 9,
 6 2025, *id.* Dkt. 110. The Court should not force SVBFT to endure a potential multi-year delay for
 7 the Officer Action to get off the ground in order to reach a final adjudication of this action.

8 FDIC-R1 chose not to pursue and waived its claims against SVBFT in bankruptcy, then
 9 delayed a year after SVBFT filed its claims in the FDIC-R Action before initiating the Officer
 10 Action. Neither the Seventh Amendment nor principles of fairness support derailing the
 11 resolution of SVBFT’s claims as a result of FDIC-R1’s own choices.

12 **FDIC-R1’s Position**

13 The FDIC-R1 agrees that bifurcation is unnecessary now that the Parties have reached the
 14 stipulation, but SVBFT’s contentions on this issue are not really about “bifurcation.” SVBFT
 15 instead seeks to rush the FDIC-Rs’ defenses to trial at a breakneck pace, inhibit coordination of
 16 discovery with the D&O Case, and override the FDIC-Rs’ constitutional right to a jury trial in
 17 that action. The Court has already held that “through case management the Court can ensure that
 18 the FDIC is not prejudiced by the progress of the Becker Action vis-à-vis this action.” (Dkt. 194
 19 at 3.) Yet this sort of prejudice is exactly what SVBFT advocates through its spurious arguments
 20 about bifurcation.

21 As explained above, an extension of the case-management deadlines is necessary given
 22 the pace of and ongoing disputes about document production, efforts to coordinate depositions
 23 between the D&O Case and this action, and SVBFT’s own litigation tactics. SVBFT’s proposal
 24 to shorten rather than modestly extend the discovery schedule entirely ignores these issues. By
 25 advocating for an unnecessarily compressed schedule that will deprive the FDIC-Rs of their right
 26 to develop critical testimony from the D&Os, SVBFT invites the sort of prejudice to the FDIC-Rs
 27 that the Court stated it would avoid by coordinating the cases through case management.

28 SVBFT also improperly asks the Court to ignore the FDIC-R1’s jury-trial rights in the

1 D&O Case. There is no dispute that the FDIC-R1 has a right to a jury trial in the D&O Case or
 2 that the breaches of fiduciary duty asserted as the basis for its affirmative defenses are the same
 3 breaches of fiduciary duty alleged in the D&O Case. Because these breaches are the same, any
 4 findings about these breaches in this action could be argued to have preclusive effect in the D&O
 5 Case, thereby preventing the jury in that action from assessing the officers' and directors' liability
 6 for these breaches.

7 SVBFT has no answer to this risk of depriving the FDIC-R1 of its constitutional jury trial
 8 right. Instead, it continues to mischaracterize the defenses by falsely suggesting that they concern
 9 SVBFT's "supervision" of the Bank "and not the alleged breach of duties of 17 former directors
 10 and officers," when in fact the D&Os' breaches are the predicate for the defenses. Courts have
 11 repeatedly held that a jury trial should precede a bench trial—even in cases filed years apart—
 12 where the cases involve "resolution of essentially the same factual question," as they do here. *Ill.*
 13 *Union Ins. Co. v. Intuitive Surgical, Inc.*, 179 F. Supp. 3d 958, 959-62 (N.D. Cal. 2016).

14 Nothing in the cases that SVBFT has cited changes this conclusion. *See Parklane Hosiery*
 15 *Co. v. Shore*, 439 U.S. 322 (1979); *United States v. Cathcart*, No. C 07-4762 PJH, 2008 WL
 16 4279716, at *1 (N.D. Cal. Sept. 12, 2008); *Complete Genomics, Inc. v. Illumina, Inc.*, 2021 WL
 17 1197096 (N.D. Cal. Mar. 30, 2021). The *Parklane* case concerned whether findings in a
 18 concluded equitable action have preclusive effect in an ongoing legal action where there is a right
 19 to a jury trial. *Id.* at 334-37. *Parklane* did not address the issue before this Court, which is how
 20 the Court should sequence ongoing proceedings to protect a jury-trial right in one of the
 21 proceedings when there is no previously adjudicated bench trial. Cases like *Illinois Union* show
 22 that courts should exercise their case-management discretion to protect the jury-trial right. As for
 23 the *Cathart* and *Complete Genomics* cases, both are irrelevant, since those cases involved
 24 requests for complete stays of one action while another proceeds, whereas here the FDIC-R seeks
 25 only to coordinate the actions to minimize interference with its jury-trial right and the risk of
 26 prejudice from being unable to develop necessary deposition testimony. *Complete Genomics* also
 27 involved proceedings at different stages: one case had just been filed while the other was filed a
 28 year earlier, had finished with fact discovery, and was set for a hearing on summary judgment.

1 2021 WL 1197096, at *4. In contrast, here both the FDIC-R1’s defenses and the D&O Case were
 2 filed in January 2025 within six days of each other, substantial document productions have been
 3 made in both actions, pleadings-based motions remain pending in both actions, and no
 4 depositions have occurred in either case yet. The cases accordingly should proceed in parallel,
 5 and the jury trial right should be respected.

6 The Court also need not resolve definitively the sequencing of trials between this case and
 7 the D&O Case at this juncture in any event. That issue can and should be the subject of separate
 8 briefing where it can be fully argued—as opposed to addressing and deciding the issue based on a
 9 joint status report followed by a status hearing. For present purposes, the substantial efficiency
 10 benefits and the extensive oral discovery that remains to be completed are more than sufficient to
 11 justify the extension of the schedule that the FDIC-Rs propose.

12 SVBFT also has no valid claim of “prejudice” from the schedule that the FDIC-Rs have
 13 proposed because SVBFT cannot recover prejudgment interest from the FDIC-Rs. As the Court
 14 has already recognized (Dkt. 108), Congress has not waived the FDIC’s sovereign immunity
 15 against claims of prejudgment interest and therefore has denied parties a remedy against the FDIC
 16 for alleged lost time value of money. That decision reflects a deliberate policy choice to protect
 17 the FDIC as a government agency performing functions in the public interest, including managing
 18 the orderly resolution of failed financial institutions like the Bank. SVBFT cannot end run this
 19 congressional policy choice by demanding a highly accelerated and unworkable schedule—which
 20 would prejudice the FDIC-Rs—to make up for allegedly lost time and thereby gain the very relief
 21 that Congress disallowed. Because SVBFT has no right to prejudgment interest, it cannot be
 22 “prejudiced” by the unavailability of that remedy. Otherwise, every party could demand
 23 expedited consideration of claims against the FDIC on this basis—a result that Congress never
 24 intended or provided for.

25 Finally, there has been no delay by the FDIC-Rs, and if anything, it is SVBFT that has
 26 delayed the proceedings through its own litigation decisions about the number of parties and
 27 claims to assert and discovery disputes to raise—a great many of which it has since abandoned.
 28 The FDIC-R1 filed the D&O Action just six days after it filed its affirmative defenses in this

1 proceeding. By statute, the FDIC-R1 had until at least March 10, 2026, to investigate and bring
 2 the claims asserted against the D&Os. *See* 12 U.S.C. § 1821(d)(14)(A)(ii). Here it sued more
 3 than *fourteen months* early so that its parallel contentions in the D&O Action and this case could
 4 be coordinated. SVBFT's criticism of the FDIC-R1's proactive approach is baseless—just like
 5 SVBFT's oft-repeated ad hominem attack that the FDIC-R only brought the D&O Case to delay
 6 this proceeding rather than to discharge its statutory duties. FDIC-R1's constitutional right to a
 7 jury trial in the D&O action takes precedence over SVBFT's preference for an accelerated trial
 8 that would prejudice the FDIC-Rs' ability to develop evidence for its defenses.

9 Dated: May 30, 2025

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1 **ATTESTATION**

2 I am the ECF user whose identification and password are being used to file the foregoing
3 Stipulation and Proposed Order. Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence
4 in the filing of this document has been obtained from the other signatories.

5
6 Dated: May 30, 2025

By: /s/ Robert A. Van Nest
7 ROBERT A. VAN NEST

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EXHIBIT 1

FDIC-R1's Proposed Case Management Deadlines

EVENT	FDIC-R PROPOSAL	CURRENT CASE SCHEDULE
Close of Fact Discovery	December 5, 2025	July 25, 2025
Deadline to Serve Opening Expert Reports	January 30, 2026	September 18, 2025
Deadline to Serve Rebuttal Expert Reports	March 13, 2026	October 22, 2025
Close of Expert Discovery	April 17, 2026	December 10, 2025
Deadline to File Motions for Summary Judgment	May 15, 2026	[To Be Determined]
Deadline to File Oppositions to Motions for Summary Judgment	June 19, 2026	[To Be Determined]
Deadline to File Replies in Support of Motions for Summary Judgment	July 17, 2026	[To Be Determined]
Deadline to File Daubert Motions	May 15, 2026	[To Be Determined]
Deadline to File Oppositions to Daubert Motions	June 19, 2026	[To Be Determined]
Deadline to File Replies in Support of Daubert Motions	July 17, 2026	[To Be Determined]
Hearing on Motion(s) for Summary judgment	[To Be Determined]	February 5, 2026
Deadline to File Motions in Limine	[Based on Trial Setting]	April 23, 2026
Deadline to File Opposition to Motions in Limine	[Based on Trial Setting]	April 30, 2026
Deadline to File Joint Pretrial Statement	[Based on Trial Setting]	April 23, 2026
Deadline to File Proposed Findings of Fact and Conclusions of Law	[Based on Trial Setting]	April 30, 2026
Deadline to File Trial Brief (if any)	[Based on Trial Setting]	April 30, 2026
Final Pretrial Conference	[Based on Trial Setting]	May 7, 2026
Trial	[To Be Determined]	July 13, 2026